



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 16, 2022

IN THE MATTER OF:

Appeal Board No. 625090

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 625082, 625083 and 625084, the claimant appeals from the decisions of the Administrative Law Judge filed August 3, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective August 16, 2021 through November 14, 2021, on the basis that the claimant was not totally unemployed and/or had earnings over the statutory limitation; charging the claimant with an overpayment of \$1,815 in regular unemployment insurance benefits recoverable pursuant to Labor Law §

597 (4), and \$300 in Federal Pandemic Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 104 effective days and charging a civil penalty of \$317.25 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 625085, 625086 and 625087, the claimant appeals from the decisions of the Administrative Law Judge filed August 3, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective August 2, 2021 through August 15, 2021, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$165 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right to receive

future benefits by 16 effective days and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 625088, 625089 and 625090, the claimant appeals from the decisions of the Administrative Law Judge filed August 3, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective August 30, 2021 through September 5, 2021, on the basis that the claimant was on a paid vacation period; charging the claimant with an overpayment of \$82.50 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), and \$300 in Federal Pandemic

Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$57.30 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

In Appeal Board Nos. 625082, 625083 and 625084, we have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made. The findings of fact and the opinion of the Administrative Law Judge, insofar as they concern these issues of lack of total unemployment and/or had earnings over the statutory limitation, recoverable overpayments and willful misrepresentation, are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

We further find and conclude that since the claimant filed this claim, effective April 12, 2021, she would not have been asked the certification's "worked" question solely in reference to days of work since the change to an hours-based system was effective January 18, 2021. The work question she was asked weekly, with instructions, is a simple straightforward question not requiring specialized knowledge. In addition, for the 11 weeks beginning with the week ending August 29, 2021, her 11 statements that she earned less than \$504 each week are factually false and, since the claimant knew the hours she had worked each week and her \$19 per hour rate of pay, knew that she earned in excess of \$504 in each of these 11 weeks so these statements are willful misrepresentations.

Finally, pursuant to the post-August 15, 2021 formula, the claimant would have

had to have worked 17 hours to lack total unemployment on two days in a week. In the week ending September 5, 2021, on August 30, 2021, she worked 11 hours 57 minutes which is rounded down to the maximum of 10 hours that day, and worked 5 hours 46 minutes on September 1, 2021 which is rounded up to six hours. This totals 16 hours of work so the claimant lacks total unemployment on one day that week, not two days. The amounts of the overpayments and civil penalty have to be referred back to the Department of Labor for recalculation.

In Appeal Board Nos. 625085, 625086 and 625087, we have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made. The findings of fact and the opinion of the Administrative Law Judge, insofar as they concern these issues of lack of total unemployment, recoverable overpayment of regular unemployment insurance benefits and willful misrepresentations, are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

In Appeal Board No. 625088, we have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made. The findings of fact and the opinion of the Administrative Law Judge, insofar as they concern the issue of receipt of vacation/holiday pay, are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

In Appeal Board Nos. 625089 and 625090, our review of the record, however, reveals that the record was not sufficiently developed on the recoverable overpayments and willful misrepresentation initial determinations. The parties should have another opportunity to submit additional testimony and other evidence on these issues concerning the recoverability of the two overpayments and whether the claimant made a certification statement for the week ending September 5, 2021 regarding the issue of receipt of vacation/holiday pay and whether this statement is factually false and constitutes a willful misrepresentation.

The screen of the weekly certification questions (Hearing Exhibit 5) and the Certification Record Report (Hearing Exhibit 6) stating the answers of "vac days" and "hol days" should be used as a basis for questioning. Additional testimony and evidence relevant to these two issues should be taken.

Before the next hearing, since the claimant did not receive the original

hearing packets, the claimant should be sent the hearing transcript, the exhibits and the hearing packet for (current) Appeal Board Nos. 625088 through 625090.

DECISION: In Appeal Board No. 625082, the decision of the Administrative Law Judge, is modified as follows and, as so modified, is affirmed.

In Appeal Board No. 625082, the initial determination, holding the claimant ineligible to receive benefits, effective August 16, 2021 through November 14, 2021, on the basis that the claimant was not totally unemployed and/or had earnings over the statutory limitation, is modified only as to the week ending September 5, 2021 to be effective for one effective day, and, as so modified, is sustained.

In Appeal Board Nos. 625083 and 625084, the decisions of the Administrative Law Judge, are modified as follows and, as so modified, are affirmed.

In Appeal Board Nos. 625083 and 625084, the initial determinations, charging the claimant with an overpayment of \$1,815 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), and \$300 in Federal

Pandemic Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 104 effective days and charging a civil penalty of \$317.25 on the basis that the claimant made willful misrepresentations to obtain benefits, are modified in accordance with this decision and, as so modified, are sustained.

The amounts of the recoverable overpayments and the civil penalty are referred to the Department of Labor for recalculation in accordance with this decision.

In Appeal Board Nos. 625085, 625086 and 625087, the decisions of the Administrative Law Judge, are affirmed.

In Appeal Board Nos. 625085, 625086 and 625087, the initial determinations holding the claimant ineligible to receive benefits, effective August 2, 2021 through August 15, 2021, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$165 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4);

and reducing the claimant's right to receive

future benefits by 16 effective days and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

In Appeal Board No. 625088, the decision of the Administrative Law Judge, is affirmed.

In Appeal Board No. 625088, holding the claimant ineligible to receive benefits, effective August 30, 2021 through September 5, 2021, on the basis that the claimant was on a paid vacation period, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

In Appeal Board Nos. 625089 and 625090, the decisions of the Administrative Law Judge, which sustained the initial determinations, charging the claimant with an overpayment of \$82.50 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), and \$300 in Federal Pandemic

Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$57.30 on the basis that the claimant made a willful misrepresentation to obtain benefits, are rescinded.

Now, based on all of the foregoing, it is

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of recoverable overpayments (\$82.50 regular unemployment insurance benefits and \$300 FPUC) and willful misrepresentation associated with receipt of holiday/vacation pay, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issues of recoverable overpayments and willful misrepresentation, only; and it is further

ORDERED, that the hearing shall be conducted so that there has been an

opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the remanded issues of recoverable overpayments and willful misrepresentation only, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER